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Counsel to TH Holdco LLC

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re
85 FLATBUSH RHO MEZZ LLC, et al.,¹

Debtors

Case No. 20-23280 (RDD)
Chapter 11

(Jointly Administered)

**TH HOLDCO LLC'S OBJECTION TO
FINAL APPLICATIONS FOR AN AWARD OF COMPENSATION
FOR PROFESSIONAL SERVICES RENDERED AND
REIMBURSEMENT OF ACTUAL AND NECESSARY EXPENSES INCURRED**

¹ The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor's federal tax identification number, include: 85 Flatbush RHO Mezz LLC (6184) (the "Mezz Debtor"); 85 Flatbush RHO Hotel LLC (5027) (the "Hotel Debtor"); and 85 Flatbush RHO Residential LLC (2261) and (the "Residential Debtor", and together with the Mezz Debtor and the Hotel Debtor, the "Debtors").

TH Holdco LLC (“TH Holdco”), submits this objection (the “Objection”) to (i) the *Final Application of Robinson Brog Leinwand Greene Genovese & Gluck P.C.*² as Attorneys for the Debtors for an Award of Compensation for Professional Services Rendered and Reimbursement of Actual and Necessary Expenses Incurred (the “Robinson Brog Final Fee App”) [Docket No. 217] and (ii) the *Final Application of Leech Tishman Robinson Brog PLLC as Attorneys for the Debtors for an Award of Compensation for Professional Services Rendered and Reimbursement of Actual and Necessary Expenses Incurred* [Docket No. 218] (the “Leesh Tishman Final Fee App”, and together with the Robinson Brog Final Fee App, the “Final Fee Apps”), and respectfully represents as follows:

PRELIMINARY STATEMENT

LTRB filed the Final Fee Apps on June 9, 2022, well before completion of the case, well before the scheduled June 30, 2022 confirmation hearing, and notably, well before it bombarded the docket with no fewer than nine significant filings. On June 23, 2022, the Debtors, through their counsel LTBR, filed: (i) the *Debtors’ Objection to Confirmation of the Second Amended Chapter 11 Plan Filed by Creditor TH Holdco* [Docket No. 229], (ii) the *Declaration of Jon DiPietra in Support of the Debtors’ Objection to Confirmation of the Second Amended Chapter 11 Plan Filed by Creditor TH Holdco* [Docket No. 230], (iii) the *Declaration of Darryl Hagler in Support of the Debtors’ Objection to Confirmation of the Second Amended Chapter 11 Plan Filed by Creditor TH Holdco* [Docket No.231], (iv) the *Debtors’ Motion for an Order Pursuant to 11. U.S.C. §363(k) Disqualifying TH Holdco from Credit Bidding and Granting Related Relief* [Docket No. 232], (v) the *Debtors’ Second Amended Chapter 11 Plan* [Docket No. 240], (vi) the

² Robinson Brog Leinwand Greene Genovese & Gluck P.C. (“Robinson Brog”) recently merged and is now known as Leech Tishman Robinson Brog PLLC. They shall be referred to herein collectively as LTRB, where appropriate.

Debtors' Second Amended Disclosure Statement [Docket No. 241], (vii) the *Motion for an Order (I) Preliminarily Approving the Debtors' Disclosure Statement and (II) Scheduling Hearing on the Debtors' Motion for an Order Approving Disclosure Statement and Confirming Debtors' Plan of Reorganization* [Docket No. 242], (viii) the *Motion Pursuant to Bankruptcy Rule 9006(c) For Order Shortening Notice on Debtors' Motion for Order (I) Preliminarily Approving Disclosure Statement and (II) Scheduling Hearing on the Debtors' Motion for an Order Approving Disclosure Statement and Confirming Debtors' Plan of Reorganization* [Docket No. 243] and (ix) the *Motion Pursuant to Bankruptcy Rule 9006(c) For Order Shortening Notice on Debtors' Motion for Order Pursuant to 11. U.S.C. §363(k) Disqualifying TH Holdco from Credit Bidding and Granting Related Relief* [Docket No. 244].

Given the fact that the Debtors have not filed monthly operating reports in several months, and the fact that LTRB is likely looking to have fees approved that may be in violation of the Consent Order (defined below), TH Holdco objects to the approval of the Final Fee Apps and asserts that any final approval of fees and expenses should be delayed until after updated monthly operating reports are filed and after LTRB has been able to provide time sheets for work performed for the remainder of the month of June.

BACKGROUND

1. On December 18, 2020 (the "Petition Date"), each of the Debtors commenced a voluntary case under chapter 11 of title 11, United States Code (the "Bankruptcy Code"). The Debtors have continued to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in these chapter 11 cases.

2. Flatbush Avenue 1 LLC (“85 Flatbush Lender”), was a secured creditor and mortgagee of the Debtors. 85 Flatbush Lender filed its proofs of claim in the Debtors’ cases reflecting that as of the Petition Date, the total amount due and owing from the Debtors to 85 Flatbush Lender was a sum not less than \$85,158,815.99 (the “85 Flatbush Lender Claim”).

3. On March 19, 2021, this Court entered an order authorizing the employment of Robinson Brog as counsel to the Debtors in these chapter 11 cases [Docket No. 62].

4. On March 29, 2021, the Bankruptcy Court entered the *Final Consent Order Authorizing (I) Use of Cash Collateral, (II) Granting Adequate Protection, and (III) Granting Related Relief* [Docket No. 64] (the “Consent Order”), pursuant to which the Debtors and the 85 Flatbush Lender agreed that as of Petition Date, the principal amount of the 85 Flatbush Lender’s claims against the estates of the Debtors is \$85,158,815.99.

5. On January 24, 2022, TH Holdco purchased the 85 Flatbush Lender Claim.

6. On February 20, 2022, TH Holdco filed its plan of reorganization [Docket No. 151] (as amended, supplemented or modified from time to time, the “TH Holdco Plan”) and disclosure statement [Docket No. 152] (as amended, supplemented or modified from time to time, the “TH Holdco Disclosure Statement”) that provided for the sale of the Debtors’ property subject to TH Holdco’s credit bid.

7. The Debtors filed monthly operating reports for each Debtor on April 6, 2022 for the reporting period of February 1, 2022 through February 28, 2022 [Docket Nos. 183, 184 and 185]. The Debtors have not filed any monthly operating reports since.

8. On May 26, 2022, the Bankruptcy Court entered an Order approving the TH Holdco Disclosure Statement [Docket No. 210] and granting related relief.

9. The Final Fee Apps include a summary of services provided to the Debtors throughout these cases. Those summaries include several references to efforts by LTRB, on behalf of the Debtors, to object to TH Holdco's Disclosure Statement and to object to TH Holdco's claim against the estates. *See* Robinson Brog Final Fee App, ¶ 25-26, and Leesh Tishman Final Fee App., ¶ 14.

OBJECTION

10. The Consent Order provides that cash collateral in an amount in excess of \$15,000 cannot be used to pay the costs of investigating or litigating any claims and causes of action against 85 Flatbush Lender. This language is common in cash collateral orders as it is designed to prevent secured lender's from having to pay for the cost of challenging their claims. TH Holdco, as assignee of 85 Flatbush Lender's rights under the Consent Order is now protected by that language.

11. The Final Fee Apps specifically acknowledge that LTBR incurred fees investigating and litigating claims and causes of action against TH Holdco. The *Debtors' Application for Order Pursuant to 11 U.S.C. Section 363(k) Disqualifying TH Holdco LLC from Credit Bidding and Granting Related Relief* [Docket No. 232], along with several of the other pleadings filed on June 23, 2022, specifically challenge the amount of TH Holdco's secured claim and seek to disqualify TH Holdco from credit bidding its claim.

12. The Final Fee App fails to provide detailed time entries for any work performed by the Debtors' counsel after June 7, 2022. Therefore, TH Holdco cannot determine at this time exactly how much of the fees and expenses sought in the Final Fee Apps violate the terms of the Consent Order.

13. In addition, and more concerning, the Debtors have provided no monthly operating information for the period of time after February 28, 2022. That failure has left all

parties and this Court in the dark with respect to the whereabouts of the Debtors cash assets for the past four months.

14. The monthly operating report for the Hotel Debtor filed April 6, 2022 [Docket No. 185] shows an end of the month cash balance of \$856,138. The monthly operating report for the Mezz Debtor filed that same day [Docket No. 183] shows an end of the month cash balance of \$1. The Debtors appear to have filed that report twice, and did not file a report for the Residential Debtor.

15. Following a request for more information, on June 23, 2022, the Debtors' counsel provided TH Holdco's counsel with an email wherein Debtors' counsel provided that "the DIP cash balance is approximately \$325,000 across all 3 debtors." *See* June 23, 2022 email attached hereto as **Exhibit A**. If Debtors' counsel is correct, then over \$500,000 has been diverted from the Debtors' estates with no transparency as to where the money has gone.

16. Given these concerning facts, TH Holdco requests that any approval of the Final Fee Apps be delayed until after (i) the Debtors have filed update and detailed monthly operating reports for the period of February 28, 2022 through present, and (ii) the LTBR has supplemented its Final Fee Apps with the detailed time records relating to work undertaken to challenge TH Holdco's claim through present.

WHEREFORE, TH Holdco requests that the Final Fee Apps be denied, or at least continued, and for such other relief as the Court deems proper. TH Holdco reserves all rights to supplement this Objection following any additional filings to be submitted by the Debtors and their counsel.

Dated: June 23, 2022
New York, New York

DENTONS US LLP

/s/ Lauren Macksoud

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Counsel to TH Holdco LLC

EXHIBIT A

Macksoud, Lauren

From: Lori Schwartz <lschwartz@leechtishman.com>
Sent: Thursday, June 23, 2022 12:22 PM
To: Richards, Robert E.
Cc: Macksoud, Lauren
Subject: RE: DHS Lease
Attachments: DHS Lease.pdf; Cvent Contract.pdf; HighRide Maintenance Contract Dumbwaiter.pdf; HighRide Maintenance Contract Freight.pdf; HighRide Maintenance Contract-Passenger.pdf; JP McHale Pest Management 2021.pdf; Enercon.pdf; Mr Linen Signed page.pdf; 85 Flatbush Residential Maintenance Contract-Passenger.pdf; 85 FLATBUSH RHO HOTEL LLC PPP Forgiveness.pdf; lot 7503 tax bill (01154112x9FBDB).pdf; lot 1203 tax bill (01154111x9FBDB).pdf; lot 1202 tax bill (01154110x9FBDB).pdf; Lot 1201 tax bill (01154109x9FBDB).pdf

Follow Up Flag: Follow up
Flag Status: Flagged

[WARNING: EXTERNAL SENDER]

In furtherance of your request and our call on Tuesday attached please find:

1. DHS lease as well as the other service contracts for the Property. I note that some of the contracts are not countersigned and have asked the Debtors management for fully executed copies or to otherwise confirm that the agreements are in effect.
2. letter reflecting forgiveness of the Signature Bank PPP loan which was listed on the Hotel schedules in the amount of \$337,797.00 and reduces the amount of unsecured claims.
3. recently issued property tax bills.

Regarding insider unsecured claims, I am advised that C&A Marketing should be listed at \$33,333 for each debtor and that Akiva Hersh Klein should be removed from the schedules. With these changes, we have recalculated that class to aggregate total claims of \$1,398,660.

I am advised that the DIP cash balance is approximately \$325,000 across all 3 debtors and that the DHS lease payments are deposited into the TD bank account.

Let me know if you require any additional information.

Thank you,

Lori Schwartz | Partner
lschwartz@leechtishmanrb.com

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Please note my new email address.

From: Richards, Robert E. <robert.richards@dentons.com>
Sent: Wednesday, June 22, 2022 5:26 PM
To: Lori Schwartz <lschwartz@leechtishman.com>
Cc: Macksoud, Lauren <lauren.macksoud@dentons.com>
Subject: RE: DHS Lease

Also please let us know the cash on hand in each of the three estates as of now and where the DHS lease revenue has been deposited and spent.

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Robert E. Richards

Global Chair, Restructuring, Insolvency & Bankruptcy

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From: Richards, Robert E.
Sent: Tuesday, June 21, 2022 9:45 AM
To: Lori Schwartz <lschwartz@leechtishman.com>
Cc: Macksoud, Lauren <lauren.macksoud@dentons.com>
Subject: RE: DHS Lease

Following up on this request for a copy of the DHS Lease.

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From: Richards, Robert E.
Sent: Thursday, June 16, 2022 5:01 PM
To: Lori Schwartz <lschwartz@leechtishman.com>
Cc: Macksoud, Lauren <lauren.macksoud@dentons.com>
Subject: DHS Lease

Please send us a copy of the current post-petition DHS Lease as signed and in effect. What is the termination notice period for that Lease?



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